



March 10, 2006

EX PARTE NOTICE

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, WC Docket No. 04-440

Petition for Limited Reconsideration of Title I Broadband Order by the Verizon Telephone Companies, CC Docket Nos. 02-33, 95-20, 98-10

Dear Ms. Dortch:

T-Mobile USA, Inc. (“T-Mobile”) urges the Commission to deny Verizon’s petition for forbearance from Title II of the Communications Act (the “Act”) and Computer Inquiry regulation for all broadband services, which Verizon filed on December 20, 2004 and explained further in an ex parte letter filed on February 7, 2006.¹ The deadline for considering the Verizon forbearance petition is March 19, 2006.²

Even as explained by the Verizon February 7 letter, the Verizon forbearance petition does not satisfy the statutory tests for forbearance. Nor, as others have pointed out, would forbearance be consistent with the Commission’s recent findings in the *Wireline Broadband Order*.³

¹ See Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, WC Docket No. 04-440 (filed Dec. 20, 2004) (“Verizon forbearance petition”). See also Letter from Edward Shakin, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 04-440 (filed Feb. 7, 2006) (“Verizon February 7 letter”).

² See Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, WC Docket No. 04-440, DA 05-3217 (WCB rel. Dec. 19, 2005).

³ See Letter from Jason Oxman, COMPTTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-440, at 2 (filed Feb. 17, 2006) (“COMPTTEL February 17 letter”), citing *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶ 9 (2005) (“*Wireline Broadband Order*”); see also Letter from Thomas Jones, Willkie Farr & Gallagher, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-440 (filed Mar. 3, 2006) (representing Covad, TWTC, XO, Conversent Communications and CTC Communications), attachment at 1.

As T-Mobile explained in an earlier opposition to this petition,⁴ T-Mobile has extensive experience as a customer of Verizon special access services provided in Verizon's local service territory. As a result of this experience, T-Mobile is deeply concerned about the Verizon forbearance petition because in Verizon's service area, T-Mobile relies predominantly on Verizon for high-capacity special access services as the links needed for T-Mobile's network from its cellular base stations to its mobile switching centers. There are few or no realistic alternatives to the use of these services.

T-Mobile has shown in the pending *Special Access* rulemaking⁵ that the Commission must strengthen its oversight of special access services pursuant to Title II, not weaken such oversight.⁶ T-Mobile hereby incorporates by reference its comments and reply comments filed in the *Special Access* rulemaking.⁷ The Verizon forbearance petition attempts to completely eliminate Commission oversight of such services.⁸ In a bid to make the petition more palatable, the Verizon February 7 letter states that "traditional" time-division multiplexed ("TDM-based") special access services can be excluded from the forbearance request.⁹ This attempted distinction cannot save the petition. In considering the special access marketplace for purposes of the Verizon forbearance petition or otherwise, there is no reasoned basis for the Commission to accord different regulatory treatment to TDM-based special access services as opposed to other broadband special access services. Commission oversight of all forms of special access services provided by ILECs should be strengthened, not weakened or removed altogether.

Because the March 19 deadline for the Verizon forbearance petition is rapidly approaching, this letter focuses on that petition. However, the Commission also should deny Verizon's petition for reconsideration of the *Wireline Broadband Order*,¹⁰ which also inappropriately seeks to deregulate broadband special access services.¹¹

⁴ See Letter from Thomas J. Sugrue, T-Mobile, to Marlene H. Dortch, FCC, WC Docket No. 04-440, CC Docket Nos. 02-33, 95-20, 98-10 (filed Jan. 9, 2006) ("T-Mobile January 9 letter").

⁵ See *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) ("*Special Access* rulemaking").

⁶ The need for strengthened oversight is heightened by the fact that, to date, the Commission has denied wireless carriers the ability to use unbundled network elements as an alternative to these special access services.

⁷ See Comments of T-Mobile in WC Docket No. 05-25, RM-10593 (filed June 13, 2005) ("T-Mobile Special Access Comments"); Reply Comments of T-Mobile in WC Docket No. 05-25, RM-10593 (filed July 29, 2005).

⁸ See Verizon February 7 letter at 2 (the baseline for the speed or bandwidth of the services for which Verizon requests forbearance is 200 kbps in each direction).

⁹ See *id.* at 2.

¹⁰ See Verizon Petition for Limited Reconsideration of Title I Broadband Order, CC Docket Nos. 02-33, 95-20, 98-10 (filed Nov. 16, 2005).

The Verizon Forbearance Petition Covers Special Access Services. The Verizon forbearance petition requests forbearance for “all broadband services” that Verizon “does or may offer.”¹² Although the Verizon February 7 letter attempts to carve out TDM-based services from the forbearance request, this carve-out provides no reason for granting the petition. Rather, the Commission should deny the Verizon forbearance petition and strengthen, not weaken or eliminate, its oversight of all forms of special access services provided by ILECs.

The record shows that there are apparent contradictions between Verizon’s descriptions of non-TDM services and the descriptions of such services in its tariffs.¹³ Moreover, Verizon clearly seeks forbearance for broadband services that can replace or eliminate the need for TDM-based special access services, including packet-switched services capable of 200kbps in each direction, and non-TDM based optical networking, optical hubbing, and optical transmission services.¹⁴

More generally, as networks evolve to rely increasingly on optical broadband technologies and packet switching, T-Mobile and other independent carriers will be forced to rely on the types of services covered by the Verizon forbearance petition for their special access needs.

The Commission Should Deny The Verizon Forbearance Petition And Use The Special Access Rulemaking To Strengthen, Not Reduce Or Eliminate, Oversight Of Special Access Services. As T-Mobile and many other parties have explained at length in the *Special Access* rulemaking and the wireline merger proceedings, the Commission should strengthen its Title II oversight of special access services substantially by reforming its pricing flexibility and price cap rules, which were adopted pursuant to Title II of the Act.¹⁵

The *Special Access* rulemaking with its comprehensive record is the proper vehicle for improving the oversight of special access services, including those broadband services that are the subject of the Verizon forbearance petition. The Commission should deny the Verizon forbearance petition. It should then follow T-Mobile’s recommendations in the *Special Access* rulemaking to reform special access oversight by limiting pricing flexibility for those services and by strengthening price caps for these services.

¹¹ See T-Mobile January 9 letter.

¹² See Verizon forbearance petition at 2.

¹³ See COMPTel February 17 letter at 7-8.

¹⁴ See Verizon February 7 letter at 2-3.

¹⁵ See, e.g., T-Mobile Special Access Comments.

Special Access Services Do Not Satisfy The Statutory Criteria For Forbearance From Title II. Because the Verizon forbearance petition does not satisfy the statutory criteria for forbearance with respect to special access services, whether TDM-based or otherwise, the Commission should deny the petition. The need for improved oversight of special access services already established by T-Mobile in the *Special Access* proceeding conversely demonstrates that the Verizon forbearance petition does not satisfy the three forbearance criteria of Section 10(a) of the Act.¹⁶

First, strengthened pricing flexibility rules and price cap regulation are necessary to prevent Verizon and other incumbent LECs from charging rates for special access that are unjust and unreasonable and from unjust and unreasonable discrimination.¹⁷ There is no basis for eliminating special access regulation altogether for the broadband services that are the subject of the Verizon forbearance petition, and there is no basis to distinguish “TDM-based special access services” from other forms of broadband special access. T-Mobile has shown that current forms of regulation for special access service do not control the incentives or the ability of Verizon and other incumbent LECs to act anticompetitively against T-Mobile.¹⁸

Second, strengthened pricing flexibility rules and price cap regulation of special access services are necessary to protect consumers.¹⁹ Consumers will be harmed if special access regulation is removed rather than improved. As T-Mobile has explained, robust special access oversight will promote wireless competition and intermodal competition to benefit consumers.²⁰ Without robust oversight, Verizon and other incumbent LECs will be able to use their control of special access inputs to stifle the competition, with its benefits to consumers, that T-Mobile and others are seeking to provide. Again, there is no basis to distinguish “TDM-based special access services” from other forms of broadband special access for purposes of analyzing this forbearance criterion.

Third, forbearance from improved pricing flexibility rules and price cap regulation of special access services would be *contrary* to the public interest.²¹ Decreased or eliminated oversight of special access services would harm, not promote,

¹⁶ See 47 U.S.C. § 160(a).

¹⁷ See *id.* § 160(a)(1).

¹⁸ See T-Mobile Special Access Comments at 2-6.

¹⁹ See 47 U.S.C. § 160 (a)(2).

²⁰ See T-Mobile Special Access Comments at 3-4.

²¹ See 47 U.S.C. § 160 (a)(3).

competition.²² T-Mobile and other wireless providers rely on ILECs, including Verizon, for inputs to their wireless offerings. Verizon and other ILECs have strong incentives to raise the price and degrade the quality of those inputs in order to protect their wireline dial tone offerings from wireless competition.²³ Those incentives apply as strongly for the broadband special access services covered by the Verizon forbearance petition as for “TDM-based special access services.”

The Commission recently adopted certain conditions regarding special access services in connection with the Verizon-MCI merger transaction.²⁴ The Commission has no grounds for forbearing from any of those merger conditions with respect to any special access service based on the Verizon forbearance petition or the Verizon February 7 letter.

Other Services. T-Mobile notes that there is a pending rulemaking to review regulatory requirements for incumbent LEC broadband telecommunications services.²⁵ That rulemaking, rather than the Verizon forbearance petition, is the better vehicle for considering any changes to existing oversight of broadband telecommunications services other than special access services. Because that proceeding has been pending for over four years, the Commission should request an additional round of comments and replies to refresh the record for rulemaking.

²² See *id.* § 160(b).

²³ See T-Mobile Special Access Comments at 4.

²⁴ See *Verizon Communications Inc. and MCI, Inc.*, WC Docket No. 05-75, FCC 05-184, App. G (rel. Nov. 17, 2005).

²⁵ See *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001).

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T-Mobile therefore respectfully requests that the Commission deny the Verizon forbearance petition and the related Verizon reconsideration petition as described above. In accordance with Section 1.1206 of the Commission's rules, this letter is filed with your office for inclusion in the public record of the above referenced proceedings. If you have any questions regarding this *ex parte* notice, please contact the undersigned.

Sincerely,

/s/ Thomas J. Sugrue

Thomas J. Sugrue

Vice President, Government Affairs

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2006 a copy of the foregoing EX PARTE NOTICE was served by U.S. Mail, postage prepaid, upon the following parties to reconsideration proceedings in CC Docket Nos. 02-33, 95-20, 98-10:

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